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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,691

08/14/2006

Ulf Johanson

4145-000017/US

9593

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7590

07/09/2008

HARNESSE, DICKEY & PIERCE, P.L.C.

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EXAMINER

BASICHAS, ALFRED

ART UNIT

PAPER NUMBER

3749

NOTIFICATION DATE

DELIVERY MODE

07/09/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

<b>Office Action Summary</b>	<b>Application No.</b> 10/549,691	<b>Applicant(s)</b> JOHANSON, ULF	
	<b>Examiner</b> Alfred Basichas	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/19/05, 1/24/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 17 is objected to because of the following informalities:
  - a. 2nd line, the term "wall" should be changed to --well--.
  - b. 6<sup>th</sup> and 7<sup>th</sup> lines, the terms "0,5", "0,3", and "0,2" should be changed to --0.5--, --0.3--, and --0.2--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 17-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - c. The use of the term "it" is vague and indefinite. The use makes it unclear as to whether "it" represents the "device" alone, or other elements as well.
  - d. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and

bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 17 recites the broad recitation of "less than 0.5", and the claim also recites "less than 0.3", "less than 0.2", and "at least 6" which are the narrower/broader statement of the range/limitation.

e. Claim 30 recites the limitation "said helical centrifuge". There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 17-19, 23, 26, 31, and 32 (as understood) are rejected under 35 U.S.C.

103(a) as being unpatentable over Vanderveer (3,808,619), which discloses substantially

all of the claimed limitations. For example,

17. Device for the elimination of particles from smoke and exhaust gases as well as ventilation air, wherein that it comprises a first chamber having an inlet for smoke or exhaust gas or ventilation air, that it further comprises a heatable combustion zone (zone 3), that it comprises a second chamber 42, 46, 54, 56 having an inlet from said first chamber for said gas, and that it comprises an outlet for agglomeration and collection of particles 42.

18. Device according to claim 17, wherein that it further comprises means 42 for providing turbulence of said gas in said first chamber (also, combustion inherently provides turbulence).

19. Device according to claim 17, wherein that it further comprises means for providing laminar flow 112 to said gas.

23. Device according to claim 17, wherein that the device further comprises a second inlet 38 into the first chamber for the addition of combustion aiding gas.

26. Device according to claim 17, wherein that the device further comprises means for the addition of energy (fuel) to said heatable combustion zone.

While Vanderveer discusses different sized particles, there is no mention of the claimed sizes. Nevertheless, it has been held that "When there is a design need or market

pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007). As for the specific range, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed range into the invention disclosed by Vanderveer, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable values or ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Swain*, 156 F.2d 239. See also *Peterson*, 315 F.3d at 1330, 65 USPQ2d at 1382 ("The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.").

7. Claims 22 and 24-30 (as understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanerveer (3,808,619) in view of Gardenier (3,613,333). Vanerveer discloses substantially all of the claimed limitations, but does not specifically recite the water and heat exchanger arrangement recited in the claims. Gardenier teaches water and heat exchanger arrangement for treating exhaust including the claimed limitations not taught by Vanerveer. Gardenier teaches that such an arrangement provides for efficiently removing contaminants from industrial gases.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time of invention to incorporate the water and heat exchanger arrangement of Gardenier into the apparatus disclosed by Vanerveer, so as to provide for efficiently removing contaminants from industrial gases.

***Prior Art***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These references disclose exhaust treatment with many of the claimed components. Nevertheless, in order to avoid overburdening the applicant with redundant rejections, these references were not applied.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

July 8, 2008

/Alfred Basichas/  
Primary Examiner, Art Unit 3749